



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,769	10/09/2001	Michael E. Koscal	ROKWELL.004C1	8785

20995 7590 10/08/2003

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

SOBUTKA, PHILIP

ART UNIT	PAPER NUMBER
----------	--------------

2684

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/974,769

Applicant(s)

KOSCAL, MICHAEL E.

Examiner

Philip J. Sobutka

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7 is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 2 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,327,476.

Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim recites a specific communication establishment routine, it would have been obvious to one of ordinary skill in the art that the wireless unit could be used with any appropriate communication establishment routine.

3. Claims 2,3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,327,476 in view of Cummiskey (US 5,005,168).

Claim 1 of the patent teaches everything except for a generating and transmitting audio samples in response to interrupts. Cummiskey et al teaches a modem with controller and codec that generates and transmits samples between sample and

Art Unit: 2684

transmit buffers in response to an interrupt (Cummiskey col 7, lines 18-45, col 8, lines 29-44, col 10, lines 5-35). It would have been obvious to one of ordinary skill in the art to modify claim 1 of US patent number 6,327,476 to use the modem arrangement of Cummiskey in order to ensure synchronization of timing of the modem signal sampling and transmission. Note that a radio transceiver is inherent in the arrangement of claim 1 of the patent.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-4, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsieh (US 6,026,308) in view of Cummiskey (US 5,005,168).

Art Unit: 2684

Consider claims 1,2. Hsieh teaches a wireless handset and base arrangement (Hsieh see especially figs 1-5, item 20), and audio input line; a wireless modem (Hsieh see especially fig 4, item 14); and a radio transceiver responsive to the modem to transmit the modulated input. Hsieh lacks a teaching of the modem including a controller and codec for generating and transmitting audio samples in response to interrupts. Cummiskey et al teaches a modem with controller and codec that generates and transmits samples between sample and transmit buffers in response to an interrupt (Cummiskey col 7, lines 18-45, col 8, lines 29-44, col 10, lines 5-35). It would have been obvious to one of ordinary skill in the art to modify Hsieh to use the modem arrangement of Cummiskey in order to ensure synchronization of timing of the modem signal sampling and transmission.

As to claim 3, note that the modem arrangement of Hsieh in view of Cummiskey also teaches receive buffers (Cummiskey see especially fig 1, col 7, lines 45-61). Note that the controller of the modem arrangement is a micro controller.

As to claim 4, note that the interrupt commands control the sample and transfer routines.

Allowable Subject Matter

7. Claims 5-7 are allowed.

Consider claim 5. The nearest prior art as shown in Hsieh and Cummiskey fails to teach a method for communicating comprising: determining if a first analog audio sample is available at a communication port of a wireless device; if the sample is available, converting the first analog audio sample to a first digital sample; compressing

Art Unit: 2684

the digital sample to create a first compressed audio sample; generating first RF signal representing the first compress audio sample; transmitting with a radio transceiver the first RF signals in a first RF signal frame; receiving with the radio transceiver a second RF signal frame including second RF signals; decompressing the second RF signals to create a second digital audio sample, converting the second digital audio sample to a second analog audio sample, transmitting the second audio sample to an audio output of the wireless device; receiving first data at a communication port of the wireless device, generating third RF signals representing the first data; and transmitting with the radio transceiver the third RF signals in third and fourth consecutive RF frames if the first analog audio sample is available, the radio transceiver receiving no RF frame between the transmission of the third and fourth frames.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hall (US 6,021,325) and Beukema et al (US 6,128,510) have been cited to show transmission of audio and data.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip J. Sobutka whose telephone number is 703-305-4825. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 703-308-7745. The fax phone numbers for

Art Unit: 2684

the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

Philip Sobutka

Pjs

September 26, 2003

A handwritten signature in black ink, appearing to read "Mike Cosca". The signature is written in a cursive, flowing style.